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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

J.H.,

Petitioner,

v.

THE SUPERIOR COURT OF FRESNO  
COUNTY,

Respondent;

FRESNO COUNTY DEPARTMENT OF  
SOCIAL SERVICES,

Real Party in Interest.

F065695

(Super. Ct. No. 12CEJ300087-1)

**OPINION**

**THE COURT\***

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Mary Dolas,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.)

Cheryl K. Turner for Petitioner.

No appearance for Respondent.

Kevin Briggs, County Counsel, and William G. Smith, Deputy County Counsel,  
for Real Party in Interest.

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\* Before Levy, Acting P.J., Gomes, J. and Kane, J.

J.H. (mother) seeks an extraordinary writ (Cal. Rules of Court, rule 8.452) from the juvenile court's orders issued at a contested dispositional hearing in September 2012, denying her reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(10) and (11)<sup>1</sup> and setting a section 366.26 hearing as to her one-year-old daughter, Sarah. We deny the petition.

### **PROCEDURAL AND FACTUAL SUMMARY**

Mother is a 30-year-old woman who suffers from mental illness. She has given birth to two daughters, Julia in 1998 and Sarah in 2011. Sarah is the subject of this petition.

This is not mother's first appearance before this court on a writ petition. In 1999, she sought writ relief from the juvenile court's orders terminating her reunification services and setting a section 366.26 hearing as to Julia. She argued that the juvenile court erred in finding she was provided reasonable services. We denied the petition. However, because the circumstances of Julia's dependency are germane to this case, we take judicial notice of our opinion (F034430), as well as the appellate record in that case and extract from them those facts that give context to the case before us.

#### ***Julia's Case***

In August 1998, mother was a 16-year-old living in a group home with then one-month-old Julia. Mother was on probation from the juvenile delinquency court because of drug and behavior related offenses. In late August 1998, she was arrested for stealing money from the group home. She also threatened the staff and threatened to leave, taking Julia with her.

The Fresno County Department of Children and Family Services (department) took Julia into protective custody, and in November 1998, the juvenile court ordered

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

mother to participate in substance abuse treatment, a mental health assessment and recommended treatment, and parenting and anger management classes. Over the ensuing year, she participated in substance abuse treatment and parenting classes and completed an anger management program. In March 1999, she completed a mental health assessment but, according to the therapist who assessed her, mother presented as angry, denied having any mental health issues, hated counseling and did not want to talk about herself. The department advised the therapist that mother was being referred for substance abuse treatment, and it was decided that she would complete a second mental health assessment after she completed the primary phase of substance abuse treatment. Mother, however, did not complete substance abuse treatment. Instead, in April 1999, she relapsed into cocaine use, and in June 1999, she was discharged from substance abuse treatment after testing positive for cocaine. In August 1999, mother was arrested and charged with battery, vandalism and malicious mischief, and returned to juvenile hall.

In November 1999, the juvenile court terminated mother's reunification services at a contested 12-month review hearing. Mother challenged the reasonableness of services on a writ petition, which we denied.

In 2001, the juvenile court terminated mother's parental rights and freed Julia for adoption. Ten years later, in October 2011, mother gave birth to Sarah.

### ***Sarah's Dependency***

In November 2011, mother took then three-week-old Sarah to the hospital to be evaluated for a virus and congestion. The hospital staff contacted the department out of concern for mother's questionable mental health and Sarah's safety. The department<sup>2</sup> was unable to obtain a protective hold but advised mother to schedule an appointment with a psychiatrist and asked the maternal grandmother (grandmother) to provide support and supervision, and contact 911 if mother exhibited any bizarre or concerning behaviors.

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<sup>2</sup> By this time, the department had been renamed the Fresno County Department of Social Services.

In March 2012, paramedics responded to a call that Sarah was choking while in the care of her maternal relatives. Paramedics found mother's behavior bizarre and contacted the police, who in turn contacted the department. A social worker responded and did not notice any bizarre behavior. Mother was not taking medication and the social worker did not know if she had made an appointment with a psychiatrist.

These dependency proceedings were initiated in April 2012, when mother took Sarah to the emergency room and reported that Sarah's vagina "twitched" while mother was breast-feeding her. Mother reported her vagina also twitched as if she were having sex with Sarah. Mother thought that was "gross" and did not want Sarah to feel that way. Sarah was examined and there were no medical concerns; however, a unit clerk and a security guard observed mother hitting Sarah.

The unit clerk said she was standing a few feet away from mother and saw her holding Sarah, who was crying loudly. The clerk saw mother slap Sarah with the palm of her hand square in the face and heard her say "shut up." Mother then grabbed Sarah's body and began sliding it back and forth on the gurney telling her to "shut up."

The security officer saw mother slap Sarah on the left buttock and thigh. He said the slap was so hard that he heard it from his location, which was approximately 10 to 12 feet away.

The police were contacted and Officers Nichols, Gregory and Nelson responded. They all had prior contacts with mother and knew that she suffered from some type of mental illness. Nichols and Gregory contacted mother on two previous occasions and she displayed paranoid and bizarre behavior. She said people were watching her and following her from the freeway while she was inside her residence. Nichols and Gregory recalled that mother could not answer questions in a reasonable manner. Gregory conducted a follow-up investigation and found that mother had been involuntarily committed on several occasions.

Nichols examined Sarah and observed two scratches approximately 1/4 inch in length on her right thigh and buttock, along with three vertical lines consistent with finger marks on her right thigh. Sarah also had red welts on her left thigh and buttock area and two red welts on her stomach.

Nichols arrested mother for misdemeanor child abuse, and then five-month-old Sarah was taken into protective custody. Mother stated she did not understand what was happening. She did not know why she was being arrested when there was an “abuser” out there who was going free. Mother denied that she struck Sarah.

Several days later, social worker Juana Perez met with mother and grandmother to discuss the case. Mother denied hitting or shaking Sarah. Perez asked her if she had sought mental health services as recommended by the department. She gave Perez a form request from Dr. Mark Chofla for blood testing. She said she received Supplemental Social Security Income for schizophrenia, and was taking Zoloft and Proset but discontinued them. She said the doctor allowed her to stop taking her medication in order to breast feed her daughter. She also told Perez that she had been drug free for 10 years.

In April 2012, the juvenile court ordered Sarah detained and ordered the department to provide mother supervised visits. The court did not authorize any other services for mother. That same month, mother entered Pathways to Recovery (Pathways), an outpatient substance abuse treatment program where she participated in the Co-Occurring Disorder Track designed to assist her with substance abuse and mental health problems. She was also seeing a doctor for psychotropic medication, attending weekly Narcotics Anonymous (NA) meetings, parenting classes, and participating in random drug testing.

In June 2012, the juvenile court adjudged Sarah a dependent child and set the dispositional hearing for July. Sarah was placed in foster care.

In July 2012, the department filed its dispositional report recommending that the juvenile court deny mother reunification services under section 361.5, subdivision (b)(10) and (11) because her reunification services and parental rights as to Julia were terminated and mother failed to make reasonable efforts to remedy the problems that led to Julia's removal. As evidence that mother failed to make subsequent reasonable efforts, the department cited her failure to complete substance abuse treatment and mental health treatment in Julia's case. As to the latter, the department reported that, as part of Julia's dependency, mother completed two mental health assessments and was diagnosed with adjustment disorder with disturbance of emotions and conduct but would not cooperate with treatment. In addition, the department reported that mother had schizophrenia for which she received social security income, and that she had a history of being involuntarily committed because of her bizarre behavior. The department also cited the many reports of mother's bizarre behavior following the first crisis referral in November 2011 and concerns that she was "mentally unstable" and "detached from reality," as well as mother's express paranoia that, for example, people were looking in her windows, wanting to climb in her mouth and wear her clothes.

The department further opined that mother's prognosis for reunifying with Sarah was poor given her untreated mental health issues and her statement to the social worker that she did not like the way her medication made her feel. The department also advised the juvenile court that Sarah's foster parents were willing to adopt her.

At the dispositional hearing, the matter was confirmed for trial and continued to September 2012. Meanwhile, the department filed an addendum report, informing the juvenile court that mother tested positive for methamphetamine in early July 2012 while in Pathways and was placed on a behavioral contract for that, as well as for unexcused absences. She was discharged from the program in late July, but was offered the opportunity to return by attending the REACH OUT program, attending 30 meetings in 30 days, and meeting with her counselor once a week. Mother declined. Mother said she

used methamphetamine because she was depressed and missed Sarah. She also said that she had “too much on her plate and [could] not do everything.”

At the contested hearing, mother was the sole witness. She testified she is a recovered drug addict and that she attended NA meetings. On cross-examination by minor’s counsel, she testified that she enrolled in drug treatment in April 2012 but was kicked out of the program for violating her contract. She said she was in the second phase at the time and was two weeks short of completing the program. She said she did not attempt to reenter drug treatment.

Mother further testified that her mental health was not a concern when Julia was removed. At that time, she did not have a psychiatric diagnosis, was not in therapy, and was not taking medication or seeing a psychiatrist. She further testified that she had been under the care of a psychiatrist for approximately a year and a half and taking medication for schizoaffective disorder.

During argument, the attorneys all acknowledged mother’s mental health as being her overriding problem. Minor’s counsel characterized mother’s testimony as “disjointed and indicative of somebody who has trouble with mental illness.” County counsel questioned whether mother had the ability to reasonably address her mental health problems on her own. Nevertheless, they joined in arguing that mother should be denied reunification services under section 361.5, subdivision (b)(10) and (11) for failing to remedy her mental health and substance abuse problems following the termination of her reunification services and parental rights as to Julia.

The juvenile court concurred, stating:

“And looking at the prior orders in the case involving Julia, originally mental health services were not offered or considered something to be provided to [mother]. It wasn’t until I think the Department assessed [mother], even at that young age, that they determined that a serious mental health issue was being exhibited and needed to be addressed and treated. And so at disposition, it was specifically ordered based on also a diagnosis that was made in regards to what the evidence shows was a serious concern at that time in the matter regarding the mother and Julia.

“So it wasn’t just an assessment that was ordered. It was specifically mental health treatment to be ordered. And based on the information in the prior case, the Department did make every effort to involve mother in mental health services and, as stated, in the information provided, mother was very uncooperative, did not complete those services and eventually services were terminated and the relationship and parental rights were also terminated as to between [mother] and Julia.

“I think substance abuse issues was also raised at that time. Although, it wasn’t the primary factor in this current case with Sarah, there is mother’s testimony, as well as evidence in regards to the substance abuse treatment and positive drug test that substances continue to be an issue with the mother ....

“But I think the pressing issue is the ongoing mental health issues that continued. And so I think the main issue that needed to be addressed in this trial was whether mother had made any reasonable efforts to treat that issue.

“I think the [d]epartment has provided information in regards to a history of mental health issues, [Welfare and Institutions Code section 5150] commitments, concerns raised by the public health nurse prior to Sarah being removed, and even I think there was at least one comment by a family member. And the [d]epartment identifies essentially no effort by the mother in treating these mental health issues. And the only testimony or evidence provided by the mother was her own testimony that she has recently returned to seeing a psychiatrist and has recently begun taking medication.

“However, there was no corroboration. There’s nothing that has been submitted to show that any of that is true. And giving mother the benefit of the doubt that it is true, it’s concerning in regards to the information as to some missed appointments, conversations between the [d]epartment and the mother....

“So if she is on medication, I think it’s unfortunate that there’s not more information as to whether ... the medication is treating the problem, whether there’s a good prognosis that this medication can successfully assist mother in doing what’s necessary to complete any services and/or overcome the issues that have led not only to [Julia being removed years ago] but the more recent incident of Sarah being removed.

“So there’s nothing to corroborate mother’s testimony that she’s currently on medication and seeing a psychiatrist, and there’s nothing to support that whether she’s benefiting from that.

“So I do see the issue being the same in that there was mental health issues primarily in the past, along with substance abuse issues and, again today, mental health issues continue with some substance abuse issues. But the focus, I believe, based on the information provided is the mental health issues. And I don’t feel that there’s been sufficient evidence to show that mother has made a reasonable effort to treat that.”

The juvenile court denied mother reunification services under section 361.5, subdivision (b)(10) and (11) and set a section 366.26 hearing. Mother filed a writ petition challenging the juvenile court’s orders denying her reunification services and setting the section 366.26 hearing. (Cal. Rules of Court, rule 8.450.) We stayed the section 366.26 hearing pending our further order.

## **DISCUSSION**

### ***I. Reasonable Efforts***

When the juvenile court removes a child from parental custody, it must order reunification services unless it finds by clear and convincing evidence that the parent satisfies any of the exceptional circumstances set forth in section 361.5, subdivision (b). (§ 361.5, subd. (a).) Here, the juvenile court relied on section 361.5, subdivision (b)(10) and (11), which provide in pertinent part:

“(b) Reunification services need not be provided to a parent ... when the court finds, by clear and convincing evidence ...: [¶] ... [¶] (10) [t]hat the court ordered termination of reunification services for any siblings ... of the child because the parent ... failed to reunify with the sibling ... [and the] parent ... has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from that parent ...[;] [¶] (11) [t]hat the parental rights of a parent over any sibling ... of the child had been permanently severed, ... [and the] parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling ... of that child from the parent.”

Mother contends that subdivision (b)(10) and (11) do not apply to her because Julia and Sarah were removed for different reasons; Julia because of her drug use and Sarah because of her mental illness. Moreover, she contends the department failed to show that she did not make reasonable efforts to treat her drug problem subsequent to her failure to reunify with Julia. We disagree.

According to the record, mother was diagnosed with mental illness during Julia's dependency but refused treatment. Over the years, her mental illness became far more severe so that by the time Sarah was born, mother was suffering from schizophrenia. Mother did not, however, properly treat her mental illness as evidenced by her bizarre behavior and multiple involuntary commitments. Further, though mother testified that she was under the care of a psychiatrist and taking medication, the juvenile court did not find her credible. On these facts, we conclude substantial evidence supports the juvenile court's finding that mother failed to make reasonable efforts to treat her mental illness.

We further conclude substantial evidence supports a finding that mother failed to treat her drug problem. She admitted to having a longstanding drug problem and she tested positive for methamphetamine after Sarah's removal. In addition, she made no effort to resume drug treatment after she was discharged from her program. On that evidence, the juvenile court could reasonably find that mother failed to make reasonable efforts to treat her drug problem as well.

## ***II. The Juvenile Court's Findings***

Mother further contends that the juvenile court failed to make "the appropriate findings regarding the 361.5(b)(10) and (11) and 361.5(c) criteria." Section 361.5, subdivision (c) allows the juvenile court to order reunification services if it finds by clear and convincing evidence that reunification would serve the child's best interest even though the juvenile court found that the parent did not make reasonable efforts under section 361.5, subdivision (b)(10) and/or (11).

Mother does not identify the "criteria" the juvenile court was required to address in its findings. Further, the record reflects that the juvenile court not only found that mother failed to make reasonable efforts under section 361.5, subdivision (b)(10) and (11) but discussed it at some length as evidenced by its ruling quoted in our summary of the case. Additionally, the record reflects that the juvenile court also expressly found that reunification would not serve Sarah's best interest. The juvenile court stated: "[N]o

evidence was really presented in this case on behalf of the mother that would show clear and convincingly that reunification would be in the minor's best interest."

### ***III. Summary***

We affirm the juvenile court's findings under section 361.5, subdivision (b)(10) and (11) that mother failed to make reasonable efforts to resolve the problems that led to Julia's removal. Thus, we also affirm its orders denying mother reunification services and setting a section 366.26 hearing as to Sarah.

Though we affirm, we question the department's wisdom of proceeding under either section 361.5, subdivision (b)(10) or (11) in a case like this where the parent's mental health problems have deteriorated to the extent that mother's have. It seems to us that section 361.5, subdivision (b)(2)<sup>3</sup> was designed to address the situation that mother presented and may have been a more appropriate fit.

### **DISPOSITION**

The petition for extraordinary writ is denied. This court orders that this opinion is final on the date it is filed. The stay order filed in this court on December 19, 2012, is vacated. The stay order is dissolved effective the date this opinion is filed.

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<sup>3</sup> Section 361.5, subdivision (b)(2) describes the parent who is incapable of utilizing reunification services because of a mental disability.